

# **EXHIBIT “S-4”**

1 COUNTY COURT OF THE STATE OF NEW YORK

2 COUNTY OF ONONDAGA : CRIMINAL TERM

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4 THE PEOPLE OF THE STATE OF NEW YORK,

5 Indict. No. 92-1114-1

6 vs.

7 CALENDAR PROCEEDING

8 HECTOR RIVAS,

9

10 Defendant.

11 -----

12 Onondaga County Criminal Court Bldg.  
13 505 South State Street  
14 Syracuse, New York 13202  
March 18, 2016

15 B e f o r e :

16 HONORABLE THOMAS J. MILLER,

17 Judge

18 A p p e a r a n c e s :

19 WILLIAM J. FITZPATRICK, ESQ.  
Onondaga County District Attorney  
20 BY: ROBERT MORAN, ESQ.  
Assistant District Attorney

21 EDWARD KLEIN, ESQ.  
KIM ZIMMER, ESQ.  
22 SIDNEY MANES, ESQ.  
CASEY JOHNSON, ESQ.  
23 Attorneys for the Defendant

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DEBORAH A. DLUGOLECKI, C.M.

Senior Court Reporter

P012444

1 THE CLERK: Hector Rivas.

2 MR. KLEIN: Hector isn't here because he  
3 is hospitalized, Judge.

4 THE COURT: Yes. I heard that.

5 MR. KLEIN: If we can approach, I can tell  
6 you about that. I don't want to do that on the  
7 record.

8 THE COURT: Yes, please.

9 (Whereupon, a discussion was had at the  
10 Bench)

11 THE COURT: Mr. Klein, Ms. Zimmer, Mr.  
12 Manes.

13 I'm sorry, sir. We haven't met.

14 MR. JOHNSON: Casey Johnson.

15 THE COURT: Mr. Johnson. You each  
16 represent Hector Rivas, is that true?

17 MR. KLEIN: Ms. Zimmer and I are assigned  
18 by the court to represent Mr. Rivas. Mr. Manes  
19 has represented him as counsel for years and  
20 through his efforts overturned his conviction.  
21 Mr. Johnson is an associate of Bousquet Holstein  
22 where Mr. Manes is a partner.

23 THE COURT: Thank you for coming over.  
24 Thank you.

25 Rob Moran appears on behalf of the

1 district attorney's office.

2 For reasons discussed here at the Bench,  
3 Mr. Rivas is not present.

4 Mr. Moran, on Thursday of this week, I  
5 believe, yesterday, you provided this court with  
6 a copy of an order from the United States Court  
7 of Appeals for the Second Circuit and you asked  
8 that this matter be placed on the court's  
9 calendar as soon as I was able. I'm in the  
10 middle, as I indicated to you at the Bench, of a  
11 non-jury trial, but if the People would like to  
12 be heard and the defense as well, I'm certainly  
13 here to listen. Go ahead.

14 MR. MORAN: Judge, one of the things I'm  
15 concerned about, I think the court has a copy of  
16 the submission made on Mr. Rivas's behalf by  
17 Mr. Manes to the Second Circuit. It contains a  
18 letter from Mr. Manes with a cover letter and  
19 then a letter signed by Mr. Rivas. It's kind of  
20 going through his version of the procedural  
21 history of this case; and throughout it, he  
22 complains about obstacles placed in the  
23 petition's way impeding them from retrying this  
24 case. On the one hand, I think Mr. Rivas is  
25 complaining about the bail status, which I

1 understand he has every right to complain about,  
2 I suppose, but I don't know that there aren't  
3 other things that he's complaining about. I'm  
4 not sure what that means. I would like some  
5 clarification on what exactly I've done to impede  
6 them from filing motions for a year. I simply  
7 have my hands tied. There's nothing I can do,  
8 except wait for motions. And up here in Syracuse  
9 I'm waiting for motions and hearing that we need  
10 more time, there's too much to go through, there  
11 are other reasons why this can't get done.

12 THE COURT: Let me interrupt you,  
13 Mr. Moran, because, as I said, I am involved in  
14 this trial.

15 Mr. Klein, what obstacles have been placed  
16 in your way by the People?

17 MR. KLEIN: The only obstacle -- Mr. Moran  
18 has been cooperative throughout. As we have  
19 needed things, I let him know. He's checked for  
20 them. They either exist or don't exist. He  
21 informs me of that. The obstacle is the nature  
22 of the case. The obstacle is the history of the  
23 case and the material that has to have been gone  
24 through.

25 I want to note that Mr. Fitzpatrick,

1 during the trial when there was the Brady problem  
2 that became an issue on appeal and the 440, the  
3 late provision of material at the time of trial,  
4 Mr. Fitzpatrick on the record said that he was  
5 frustrated because every time a police officer  
6 came over, they came over with new reports that  
7 he had never seen. That has continued. There  
8 are reports that Mr. Moran hasn't seen. There  
9 are reports that we know are out there that  
10 haven't been provided to Mr. Moran. We keep  
11 coming across things and partly because the files  
12 are paper files. I don't know what manner they  
13 kept records in those days, but it wasn't  
14 computerized, and so we continue to learn things  
15 and get things. Also complicated by the fact  
16 that we now have modern technology. We have DNA.  
17 We have better laboratory procedures. So there  
18 are tests that have been done. There are tests  
19 that we're requesting be done. That all takes  
20 time. And against that is the background of the  
21 case. It was indicted in late November of 1992  
22 and tried in March of 1993 by an attorney from  
23 out of the area who lacked skills to try any  
24 criminal case, let alone a homicide case, and who  
25 had asked for an adjournment of that trial and

1 Judge Mulroy denied it. Even though at that  
2 point he had asked for an adjournment, he had not  
3 had his investigator come to Syracuse. His  
4 investigator spent two days here in early March  
5 with a trial of two weeks and saw maybe five  
6 people and went back to New York City. That's  
7 what -- you know, we're retrying a case that was  
8 so screwed up in the beginning that it's taking  
9 longer now to get it in shape to be tried.

10 Mr. Moran is not part of that and he's not being  
11 an obstacle. The obstacle is the history of the  
12 case, and I really think the Second Circuit is  
13 taking another look at that because I don't think  
14 they were aware of that when they issued a  
15 mandate last spring. So maybe they're  
16 re-thinking it, but it has nothing to do with you  
17 or the court. You offered trial dates that were  
18 speedy and would have allowed the case to be  
19 tried, but it couldn't have been tried by any  
20 competent defense team before now and we're  
21 trying, as we talked about that, to have it ready  
22 for June. And that is going to be difficult, but  
23 we're committed to do that. But any competent  
24 defense counsel team would be in the same  
25 position where we are given the history of the

1 case and what has to be done.

2 THE COURT: Mr. Moran, anything else?

3 MR. MORAN: No, your Honor.

4 THE COURT: Mr. Klein, anything else?

5 MR. KLEIN: No, your Honor. Thank you.

6 THE COURT: Let me vent a little bit  
7 today, please. You're right. We have attempted  
8 to schedule this case for trial on many  
9 occasions, and I've known most of you for a very  
10 long time. I know you're all very competent  
11 attorneys, and it will be a pleasure, if we ever  
12 get to this stage, to have a trial with all of  
13 you.

14 But having reviewed the submission of the  
15 Second Circuit and now looking at their order  
16 this morning, it's ironic, I would say, if not  
17 disingenuous, to be complaining in correspondence  
18 about the scheduling of this case for trial when  
19 no motions have been filed by the defense.  
20 Discovery issues, if they exist, don't prevent  
21 filing some of these motions. I have none at  
22 this point. I've attempted from the first  
23 appearance date to give you a trial date, and  
24 each time I've been told the defense isn't ready,  
25 for whatever reason. The March trial date has

1           been moved yet again at the defense request now  
2           to June. Initially you were given a December  
3           trial date. I was told that was too soon. The  
4           Second Circuit is free to do whatever they see is  
5           justice, but I am at a complete loss as to what  
6           I'm to do or what they would do if they were in  
7           my shoes to move this case along. This trial is  
8           scheduled now for June. If I have to be here by  
9           myself with twelve jurors, then I'll be here by  
10          myself. Don't come to me looking for any further  
11          adjournments. I will not grant them. It is  
12          intellectually inconsistent that on the one hand  
13          the defendant, through Mr. Manes, is saying to  
14          the Second Circuit I want my trial now, and on  
15          the other hand Mr. Klein is telling me he's not  
16          ready to go to trial and I need more time for  
17          motions.

18           June 13th is our trial date. That's a  
19          date certain whether this defendant is in or out  
20          of custody. I will be here with a jury. I hope  
21          you'll all join me. There are too many people  
22          involved in this case, and, frankly, there are  
23          too many courts involved in this case.

24           Mr. Langone told me he was not involved in  
25          this case. However, the Second Circuit has

1 indicated their expectation he should be here  
2 ready to try this case back on February 1st.

3 Frankly, as I indicated to you all at the Bench,  
4 I don't get it.

5 June 13 trial date certain. Thank you.

6 MR. KLEIN: Thank you, your Honor.

7 (Whereupon, the proceeding was adjourned)

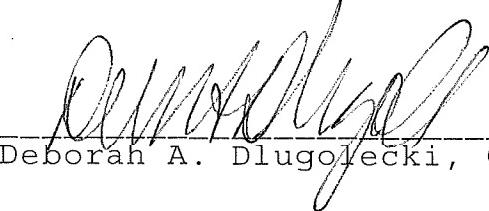
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10 C E R T I F I C A T E

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12 This is to certify that I am a Senior Court  
13 Reporter of the Fifth Judicial District; that I  
14 attended and reported the above-entitled proceedings;  
15 that I have compared the foregoing with my original  
16 minutes taken therein, and that it is a true and  
17 correct transcript thereof and all of the proceedings  
18 had therein.

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21 Deborah A. Dlugolecki, C.M.  
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